
(1997) 05 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.A. No. 991 of 1994

New India Assurance Co. Ltd.

APPELLANT

Vs

Prabha Jain and Others

RESPONDENT

Date of Decision : 06-05-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 149, 166

Citation : (1998) ACJ 1401 : (1998) 1 MPLJ 43

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : N.S. Ruprah, for the Appellant; P. Diwakar, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The insurer, New India Assurance Co. Ltd. calls in question the propriety of the award dated 30.9.1994 passed in Claim Case No. 18 of 1993 by the Motor Accidents Claims Tribunal, Chhindwara.

The facts as have been unfolded from the materials on record are that the respondents as claimants filed an application u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred as "the Act") forming the subject matter of claim case No. 18 of 1993 claiming compensation for the death of Dr. Santosh Jain. It was put forth in the application that the deceased was himself driving his Fiat car bearing registration No. MP-02-4444 on 7.6.93 from Narsinghpur to Chhindwara. The vehicle dashed against a tree and as a consequence thereof said Dr. Santosh Jain was injured and ultimately met his end. Along with the application preferred u/s 166 of the Act, an application u/s 140 of the Act was submitted claiming compensation under the said provision. The said application was resisted by the insurance company specifically advancing a plea that it had not insured any occupant of the said car and the deceased was himself the owner and was driving the vehicle in question and, therefore, no liability could be fastened on

the insurer in absence of any special contract to that effect. Without scrutinising the legal liability of the insurer the Tribunal allowed the application preferred u/s 140 of the Act directing the insurance company to pay an amount of Rs. 25,000 to the claimants. The said interim award was challenged before the Court in M.A. No. 830 of 1994. While the said appeal was pending for adjudication before this Court, the Tribunal took up the matter instituted u/s 166 of the Act and came to hold that the claimants were not entitled to any compensation and accordingly rejected their application. However, while dismissing the main application the Tribunal held that the submission of the insurance company that in view of the dismissal of the application u/s 166 of the Act, it was entitled to recover the awarded amount u/s 140 of the Act was not tenable in law. The affirmation of the interim award passed u/s 140 of the Act is the cause of grievance of the present appellant.

I have heard Mr. Ruprah, learned Counsel for the appellant and Mr. Diwakar for the claimants/respondents. On a perusal of the record it is clear as day that objections raised at the time of passing of the award u/s 140 of the Act were not considered and, therefore, the same was called in question in this Court in M.A. No. 830 of 1994. As in the meantime the main award was passed the appeal preferred before this Court was rendered infructuous. This fact is apparent from the order dated 23.2.97 passed in this appeal. It is distinctly perceptible that while disposing of the main application the Tribunal has exonerated the insurance company from the liability. The question that falls for consideration is whether exoneration at the stage of final adjudication would entitle the insurance company to recover the amount paid while complying with the award passed u/s 140 of the Act.

On reading the relevant provisions of the Act, it is quite clear that the earlier provision 92-A as well as Section 140 of the present Act relates to the grant of an interim relief. Victims of an accident who approach the Tribunal for getting compensation, the enquiries contemplated under this provision only relate to prima facie view of the matter and detailed enquiry at that stage is not called for. In fact, the same is contrary to the intention of the statute. But an interim order or interim relief granted is subject to the final adjudication. This Court in the case of Mohammad Ilias Vs. Bodhani Bai and Others, , while dealing with the scope of Section 92-A and the plea of insurance company and the ultimate liability of the insurer held as follows:

The further question then is: "What happens if ultimately on investigation and enquiry and after participation by the insurance company in the proceedings initiated by an application u/s 110-A of the Act, the insurance company is found not liable at all?" This will mean that the Tribunal fastens no "liability" in relation to death of or bodily injury to any person, including the liability in respect thereof u/s 92-A and arising out of the use of a motor vehicle. Certainly in that event, by making an award u/s 110-B, the Tribunal though holds the owner of the vehicle liable shall have to discharge the insurer from all liability arising out of the

accident in respect of death of or bodily injury to any person. The insurance company in such an event shall be entitled to a direction for reimbursement of liability discharged by it consequent upon an order for payment of compensation u/s 92-A.

This Court in the case of National Insurance Co. Ltd. Vs. Savitri Bai alias Vaishakhia Bai and Others, , while discussing the scope of Section 92-A and the ultimate adjudication of the main application held as follows:

...it should not be inferred that the insurer has to be denied the right to plead and to establish the statutory defences, if any, available to it under the provisions of the Act and contend that in the facts and circumstances of the case it is neither liable to pay the final amount of compensation nor the interim amount of compensation u/s 92-A of the Act. What is really meant is that the trial of such defence/defences has to be postponed to be held along with the other issues framed in the claim case and that if the insurer is successful in establishing any such defence/defences, the owner of the vehicle is to be held liable to reimburse the said amount to the insurer in the final award to be made by the Tribunal.

I may further refer to the decision rendered in the case of National Insurance Company, Jabalpur Vs. Thaglu Singh and Others, , wherein delineating the liability of the insurance company u/s 140 of the Act it has been held as follows:

If ultimately, in passing the final award, it is found that the insurer has no liability with regard to persons who sustained injuries, fatal or otherwise, the Tribunal may issue appropriate directions for reimbursement of the amount from the owner(s) of the vehicle(s).

Recently in the case of Jaganoo and Others Vs. Chhote and Others, , this Court has expressed thus:

When the Tribunal has found that the insurance company is not liable to compensate the insured, the amount deposited by the company towards no fault liability has to be refunded by virtue of provisions u/s 149(4) of the Motor Vehicles Act, 1988.

In the case at hand, it is abundantly clear that the insurance company has been absolved of its liability as the policy does not cover the occupants. This is a total absolution and, in fact, no liability can be fastened even under the concept of "no fault liability". The insurance company has been successful in relieving itself from the liability by advancing the statutory defence as enjoined u/s 149 of the Act. In view of the decided position of law there is no iota of doubt that the insurance company is entitled to recover the amount from the claimants/respondents. The conclusion of the Tribunal that the interim award would remain valid and the insurance company would not be entitled to recover the same, does not stand scrutiny and is liable to be set aside, and accordingly I do so.

In the result, the appeal is allowed. However, in the peculiar facts and

circumstances of the case there shall be no order as to costs.